

CHAPTER 1

INTRODUCTION

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CHAPTER 1 INTRODUCTION

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CHAPTER 1

INTRODUCTION

This is the Final Environmental Impact Statement (Final EIS) for the Powder River Basin (PRB) Expansion Project, proposed by the Dakota, Minnesota & Eastern Railroad Corporation (DM&E). It was prepared by the Surface Transportation Board (Board) as the lead Federal agency with jurisdiction over the project, working with five cooperating Federal agencies. It contains additional analysis conducted in response to the comments received on the Draft EIS, issued on September 27, 2000, and it identifies the environmentally preferable project alternatives and recommended measures to mitigate environmental impacts. The five agencies cooperating on the EIS are the U.S. Department of Agriculture, Forest Service (USFS); U.S. Department of the Army, Corps of Engineers (COE); U.S. Department of Interior, Bureau of Land Management (BLM) and Bureau of Reclamation (Reclamation); and the U.S. Department of Transportation, Coast Guard (Coast Guard).¹ This chapter describes the project's EIS process, the approval processes of each cooperating agency, and the document's format.

1.1 THE ENVIRONMENTAL IMPACT STATEMENT (EIS) PROCESS OVERVIEW

With the National Environmental Policy Act of 1969² (NEPA), Congress established a national policy through which the Federal government would promote activities to prevent or eliminate environmental harm while improving man's health and welfare. NEPA requires Federal agencies to consider "to the fullest extent possible" the environmental consequences "in every recommendation or report . . . on major Federal actions significantly affecting the quality of the human environment."³

The President's Council on Environmental Quality (CEQ) was established to develop regulations for implementing NEPA's provisions. CEQ's regulations⁴ state that NEPA is intended to:

¹ Throughout this document, "SEA" is used to refer to analysis and conclusions of the Board's Section of Environmental Analysis and the five cooperating agencies. For those instances in which one or more of the relevant cooperating agencies holds a different opinion than the Board and other cooperating agencies, the document so indicates.

² 42 U.S.C. 4321-4347.

³ 42 U.S.C. 4332(2)(C). "Major Federal actions" include projects regulated or approved by Federal agencies. 40 CFR 1508.18.

⁴ 40 CFR 1500-1508.

- help public officials' decision-making through consideration of the environmental consequences of their decisions,
- help public officials protect, restore, and enhance the environment, and
- ensure that environmental information used in decision-making is available to both public officials and citizens before taking any action on a particular proposal.

To implement NEPA, Federal agencies prepare environmental documentation for proposals they consider, as part of the agency's decision-making process. This documentation must discuss environmental impacts of the proposal and alternatives to it, including the no-action alternative. Sometimes, an Environmental Assessment⁵ is sufficient, while in other cases, such as the DM&E case, a more in-depth environmental document is warranted, and the agency decides to prepare an EIS.

The EIS is not a decision document, since it is not intended to present the decision of an agency on a particular proposal. The purpose of NEPA is to focus the attention of the government and the public on the likely environmental consequences of a proposed agency action before it is started, in order to reduce or avoid potential negative environmental impacts.⁶ While NEPA requires agencies to take a "hard look" at the environmental consequences of their decisions, it does not dictate a specific outcome or decision on a project. Thus, once the adverse environmental effects of a proposed action have been adequately identified and evaluated, agencies may conclude that other values outweigh the environmental cost.

The EIS process begins when a Federal agency determines that a proposal may result in significant environmental impacts, making preparation of an EIS appropriate. The agency publishes its intention to prepare an EIS in a Notice of Intent (NOI) in the *Federal Register*.⁷ This informs the public, other agencies, Tribes, and interested parties of the proposed project, invites their participation in the EIS process, and initiates the scoping phase of the process.

⁵ An Environmental Assessment is a concise public document issued by the agency that contains sufficient information for determining whether to prepare a full EIS or make a finding of no significant impact. See CFR 40 1508.9; 49 CFR 1105.4(d).

⁶ 40 CFR Part 1500.1(b).

⁷ 40 CFR 1501.7.

The next step in the process is scoping, when the agency or agencies involved in the preparation of an EIS identify the potential environmental issues and concerns related to the proposed project that will be addressed in an EIS. Scoping is an open process involving the distribution of information to Federal, state, and local agencies, Tribes, all interested parties, and the public, and the opportunity for them to comment. Based on the comments an agency receives during scoping, and its own information-gathering process, the agency will prepare a final scope of study. The final scope of study identifies the specific topics, issues, and environmental resources that the agency will discuss in the EIS. After determining the final scope of study for the EIS, the lead agency, in cooperation and consultation with any cooperating agencies, prepares a Draft EIS and issues it for public review and comment for a minimum of 45 days.

Following the close of the comment period, the agency preparing the EIS must review and consider the comments received on the Draft EIS. Responses to the comments received on the Draft EIS are included as part of the Final EIS. The comment period provides a means to verify the information contained in the Draft EIS. Necessary changes or modifications, based on the comments received, are incorporated into the Final EIS. This process helps give the decision-makers a complete and accurate assessment of potential environmental impacts.

The Board's Section of Environmental Analysis (SEA) assures that the Board meets its responsibilities under NEPA. SEA provides the Board with an independent environmental review of those proposals for which an environmental review is triggered by NEPA and the Board's implementing regulations at 49 CFR Part 1105. SEA prepares an EA or EIS, as appropriate, and provides technical advice and recommendations to the Board on environmental matters.

1.2 THE POWDER RIVER BASIN EXPANSION PROJECT

On February 20, 1998, the Dakota, Minnesota & Eastern Railroad Corporation (DM&E or Applicant) filed an Application with the Board for authority to construct and operate a new rail line and associated facilities in east-central Wyoming, southwest South Dakota, and south-central Minnesota. The stated purpose of DM&E's Powder River Basin Expansion Project⁸ (PRB Expansion Project) is to attain access as a third rail carrier to Wyoming's PRB coal mines for coal transport eastward, and to increase the safety and operational efficiency of DM&E's

⁸ This case was originally entitled Dakota, Minnesota & Eastern Railroad Corporation – Construction and Operation – in Campbell, Converse, Niobrara, and Weston Counties, WY, Custer, Fall River, Jackson, and Pennington Counties, SD, and Blue Earth, Nicollet, and Steele Counties, MN. By decision served May 7, 1998, the Board shortened the title. In both the Draft EIS and this Final EIS, DM&E's proposal is referred to as the Powder River Basin Expansion Project or PRB Expansion Project and encompassed both construction of the new rail line and the upgrade of DM&E's existing line.

existing rail line in Minnesota and South Dakota. Under the Interstate Commerce Commission Termination Act of 1995 (ICCTA), a railroad seeking to construct a new line must obtain authorization from the Board under 49 U.S.C. 10901 prior to beginning construction.⁹ Here, the Board determined that the proposed project could have significant impacts on the environment.¹⁰ Therefore, the Board's Section of Environmental Analysis (SEA), with the cooperating agencies, decided to prepare an EIS to evaluate the proposal's potential environmental impacts.

The PRB Expansion Project is the largest and most challenging construction proposal ever before the Board. It comprises approximately 281 miles of new rail construction and 598 miles of rail rehabilitation, traverses three states (Figure 1-1 and 1-2), involves the participation of five cooperating agencies, entails numerous and diverse environmental issues, and involves new rail yards and various alternatives, as well as bypass proposals, the majority of which have their own potentially significant environmental impacts.

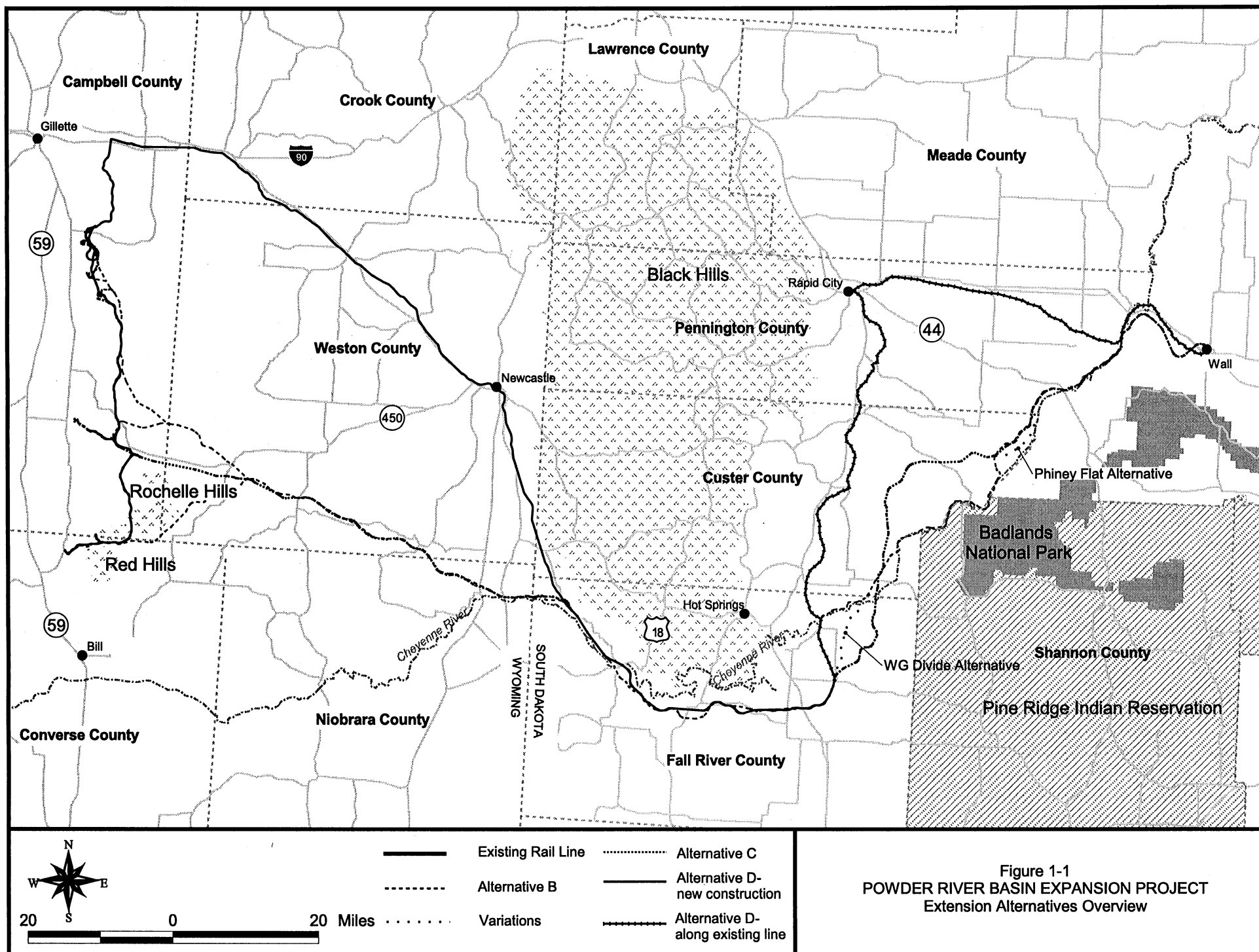
1.3 DRAFT EIS SCOPING PROCESS

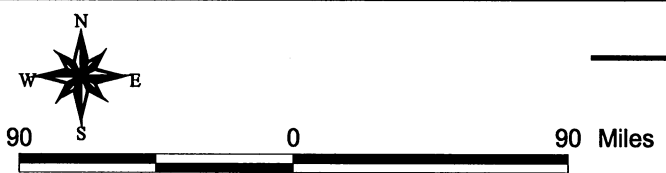
Scoping is the process by which an agency preparing an EIS identifies potential environmental issues for the proposed project. The Board published its Notice of Intent (NOI) to Prepare an EIS and Conduct Scoping Meetings on March 30, 1998. Between April and July of 1998, SEA conducted 14 agency and public scoping meetings in the three affected states to solicit public involvement and ideas. Interested persons and agencies participated by attending these meetings or by reviewing the Draft Scope of Study (Draft Scope) for the EIS made available at the meetings, and by providing oral and written comments on issues of concern.

Information on the project, the Draft Scope, and comment forms were provided at these meetings, and tape recorders were available for those who preferred recording their spoken remarks to submitting written comments. Comment forms were submitted at meetings or mailed

⁹ Under ICCTA, construction proposals are to be approved unless they are inconsistent with the public interest (49 U.S.C. 10901(c).) The statute provides: "The Board shall issue a certificate authorizing [the construction] unless the Board finds that [the construction is] inconsistent with the public convenience and necessity." While the term "public convenience and necessity" is not defined in the statute, it is well settled that the term involves a determination of whether (1) the applicant is financially fit to undertake the construction and provide service, (2) there is a public demand or need for the proposed service, and (3) the construction project is in the public interest and will not unduly harm existing services. Also see the Board's implementing regulations at 49 CFR 1150.

¹⁰ Surface Transportation Board, Notice of Intent to Prepare an Environmental Impact Statement (EIS), Request for Comments on the Proposed EIS Scope, and Notice of Scoping Meetings, March 30, 1998.





Existing Rail Line County Lines

Figure 1-2
POWDER RIVER BASIN EXPANSION PROJECT
Overview
Existing Rail Line Rehabilitation

directly to the Board. Attendees could take comment forms for other family members, neighbors, or friends unable to attend the meetings, and interested parties could submit written comments along with or instead of comment forms. More than 1,000 members of the public and representatives of more than 30 Federal, state, and local agencies attended the scoping meetings, which yielded over 600 comment forms and more than 5,000 written comments from a variety of interests, including individuals, agencies, Tribes, and communities.

On June 10, 1998, the Board published the Draft Scope in the *Federal Register* and invited public comment. Based on a complete review of all oral and written public comments received during scoping, the Board issued the Final Scope of Study (Final Scope) on March 10, 1999. The Final Scope was served on all parties of record, mailed to approximately 2,000 people, and published in the *Federal Register* (64 Fed. Reg. 11,980 (1999)).

SEA also conducted an extensive public outreach program to promote notice of the proposal and identify the public's environmental concerns related to this project. This included meetings and consultations, many site visits, use of the Board's official website, and a toll-free project hotline. In addition, SEA prepared comprehensive mailings that included newsletters and other information mailed to Parties of Record, agencies, Tribal members, and individuals who had expressed interest in the project by attending public meetings, submitting written comments on the Draft Scope, or requesting inclusion on the environmental distribution list. These outreach materials provided descriptions of the project and an explanation of SEA's environmental review process in order to facilitate and encourage public understanding and participation.

Several resource agencies, communities, and Native American Tribes and organizations, including the cooperating agencies, expressed an interest during the scoping process and preparation of the Draft EIS in meeting with SEA and representatives of DM&E to discuss in greater detail the project and the environmental resources potentially affected. Therefore, additional meetings and consultations were held with a number of individuals and groups, as outlined in the Draft EIS (Chapter 1, Section 1.7).

1.3.1 DM&E's PROPOSED NEW RAIL CONSTRUCTION

Initially, the scoping process focused on proposed new rail construction in DM&E's Application before the Board. DM&E's new rail construction would include 262.03 miles of rail line extending off DM&E's existing system near Wasta, South Dakota, extending generally southwesterly to Edgemont, South Dakota, and then westerly into Wyoming to connect with

existing coal mines¹¹ located south of Gillette, Wyoming (Figure 1-1). This portion of the new construction would traverse parts of Custer, Fall River, Jackson, and Pennington counties in South Dakota, and Campbell, Converse, Niobrara, and Weston counties in Wyoming.

Other proposed new rail construction described in DM&E's Application included a 13.31-mile line segment at Mankato, Minnesota, within Blue Earth and Nicollet counties (Figure 1-3). DM&E currently has trackage on both sides of Mankato, accessed by trackage rights¹² on rail line operated by Union Pacific Railroad Company (UP). Proposed Mankato construction would provide DM&E direct access between its existing lines and avoid operational conflicts with UP.

The final proposed segment of new rail construction in the Application would connect the existing rail systems of DM&E and the I&M Rail Link Railroad. The connection would include construction and operation of 2.94 miles of new rail line near Owatonna, Minnesota in Steele County (Figure 1-4), allowing interchange of rail traffic between the two carriers.

1.3.2 DM&E's PROPOSED REHABILITATION PROJECTS

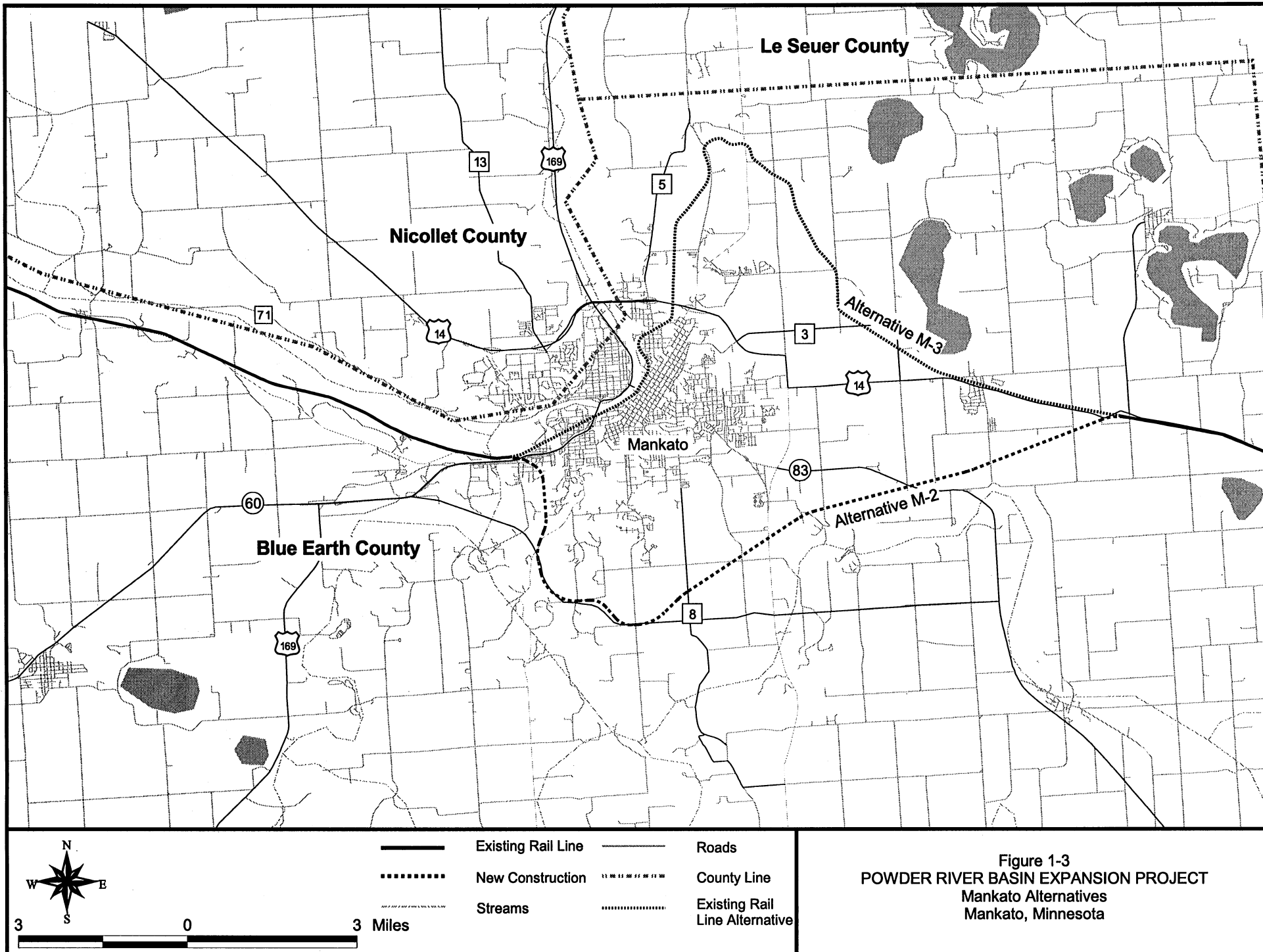
In order to transport coal over DM&E's existing system, DM&E also proposed to rebuild and upgrade approximately 597.8 miles of rail line along its existing system in Minnesota and South Dakota (Figure 1-2). The majority of this (584.95 miles) would be along DM&E's mainline between Wasta, South Dakota, and Winona, Minnesota. This upgrade would cross Winona, Olmsted, Dodge, Steele, Waseca, Nicollet, Blue Earth, Brown, Redwood, Lyon, and Lincoln counties in Minnesota, and Brookings, Kingsbury, Beadle, Hand, Hyde, Hughes, Stanley, Haakon, and Jackson counties in South Dakota. DM&E also proposed to rebuild an additional 12.85 miles of existing rail line between Oral and Smithwick, in Fall River County, South Dakota. Rail line rehabilitation would include rail and tie replacement, additional sidings, signals, grade crossing improvements, and other systems.

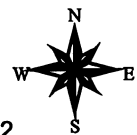
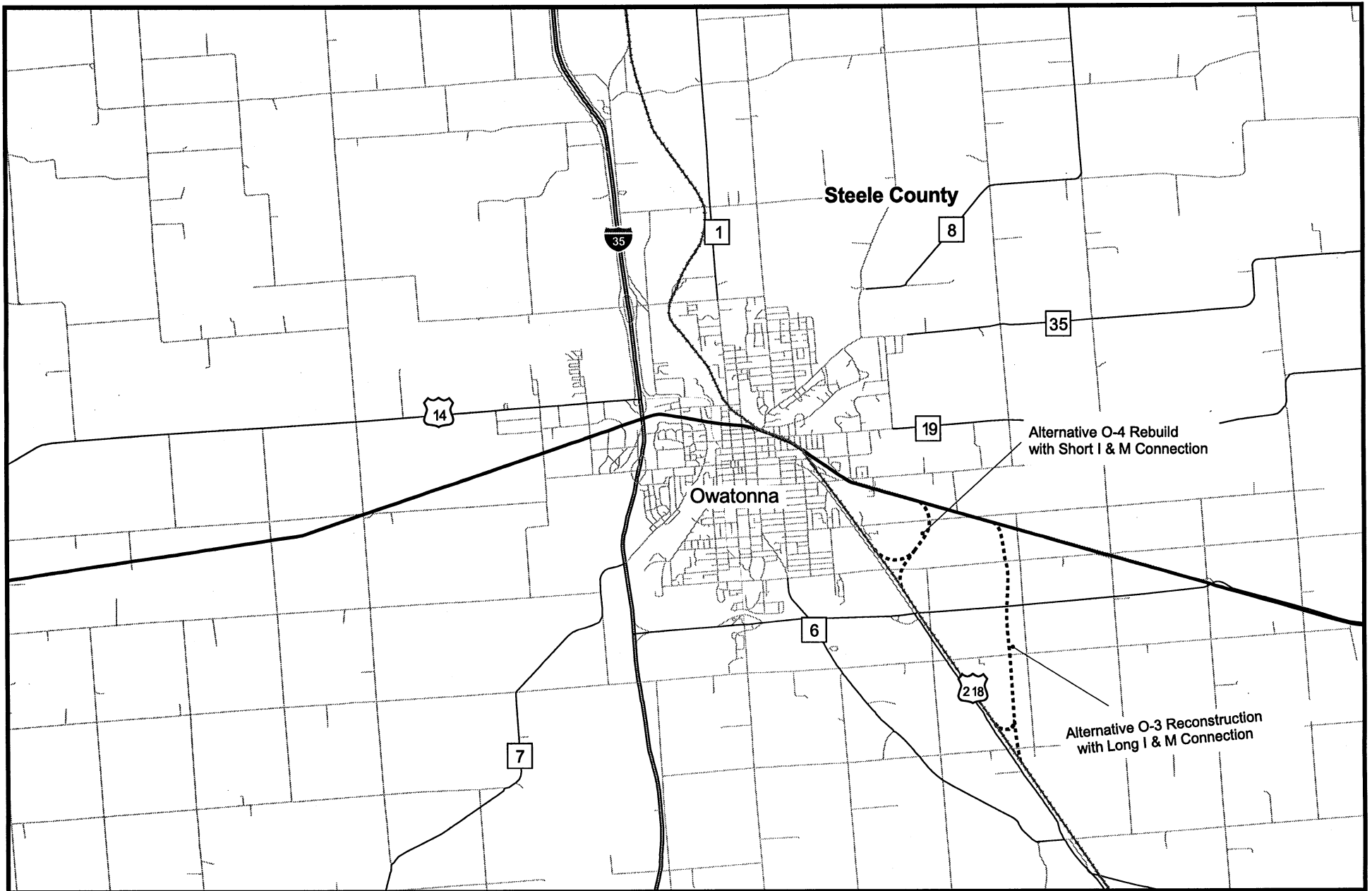
Under ICCTA, the Board has authority to license new rail lines reaching new markets,¹³ but railroads need not seek the Board's authority to rehabilitate or improve their existing systems. When DM&E submitted its Application to the Board in February of 1998, it sought the Board's

¹¹ Caballo, Belle Ayr, Caballo Rojo, Cordero, Coal Creek, Jacobs Ranch, Black Thunder, North Rochelle, North Antelope, Rochelle, and Antelope.

¹² Trackage rights are arrangements by which one rail carrier allows another to use its railroad track.

¹³ 49 U.S.C. 10901(a).





2 0 2 Miles

- | | | | |
|-------|--------------------|-------|---------------|
| ———— | Existing Rail Line | ———— | Roads |
| | New Construction | ----- | I&M Rail Link |

Figure 1-4
POWDER RIVER BASIN EXPANSION PROJECT
Owatonna Alternatives
Owatonna, Minnesota

approval to construct and operate the new rail lines noted above. DM&E's Application did not seek the Board's approval of DM&E's plans to rehabilitate its existing rail line in South Dakota and Minnesota. To meet the Board's NEPA obligations, SEA is examining the potential environmental impacts of both the proposed 280-mile new line and the anticipated effects of an increase in rail operations on DM&E's existing mainline, which would not occur but for DM&E's construction proposal. Although it would not normally do so, SEA is also addressing construction-related impacts associated with rebuilding DM&E's existing line in this case because the U.S. Army Corps of Engineers (COE), as one of the cooperating agencies, requires an analysis of the construction-related impacts along the line to be rebuilt to satisfy the COE's permitting requirements under the Clean Water Act.

1.3.3 ALTERNATIVES TO DM&E's PROPOSED ROUTES

On January 6, 1999, prior to scoping completion, Rochester, Minnesota requested that SEA consider a south bypass corridor (Rochester Bypass) as an alternative to DM&E's proposed plan to rehabilitate its line and operate additional rail traffic, primarily coal trains, through Rochester. In the Final Scope issued in March 1999, SEA provided a 30-day period for comment on the Rochester Bypass. In its April 20, 1999 Notice to the Parties, SEA decided to provide an opportunity for other affected communities to develop bypass proposals. SEA noted that it would evaluate whether each bypass proposal submitted was a reasonable and feasible alternative to DM&E's existing route upgrade plan, or would simply shift environmental consequences to other communities and populations. Moreover, SEA stated that in making its decision, it would consider DM&E's goal of creating more efficient coal transport. SEA noted that "a circuitous route that bypasses numerous communities could add so many additional miles that it would be unlikely to allow the Applicant to achieve its goal of providing efficient rail transportation." (See Notice to the Parties, at page 2, in Appendix A of the Draft EIS.)

Besides Rochester, three communities submitted bypass designs to SEA: (1) Owatonna, Minnesota; (2) Brookings, South Dakota; and (3) Pierre, South Dakota. As part of its preparation of the Draft EIS, SEA assessed each of these bypass proposals and determined that three – for Rochester, Owatonna, and Brookings – were reasonable and feasible alternatives and should be subjected to the same environmental analysis as DM&E's proposal. SEA concluded that the Pierre, South Dakota bypass was not reasonable because of significant environmental and engineering constraints. Therefore, it received no further consideration. Because Owatonna withdrew its bypass proposal, it was not subjected to extensive environmental review in the Draft EIS either.

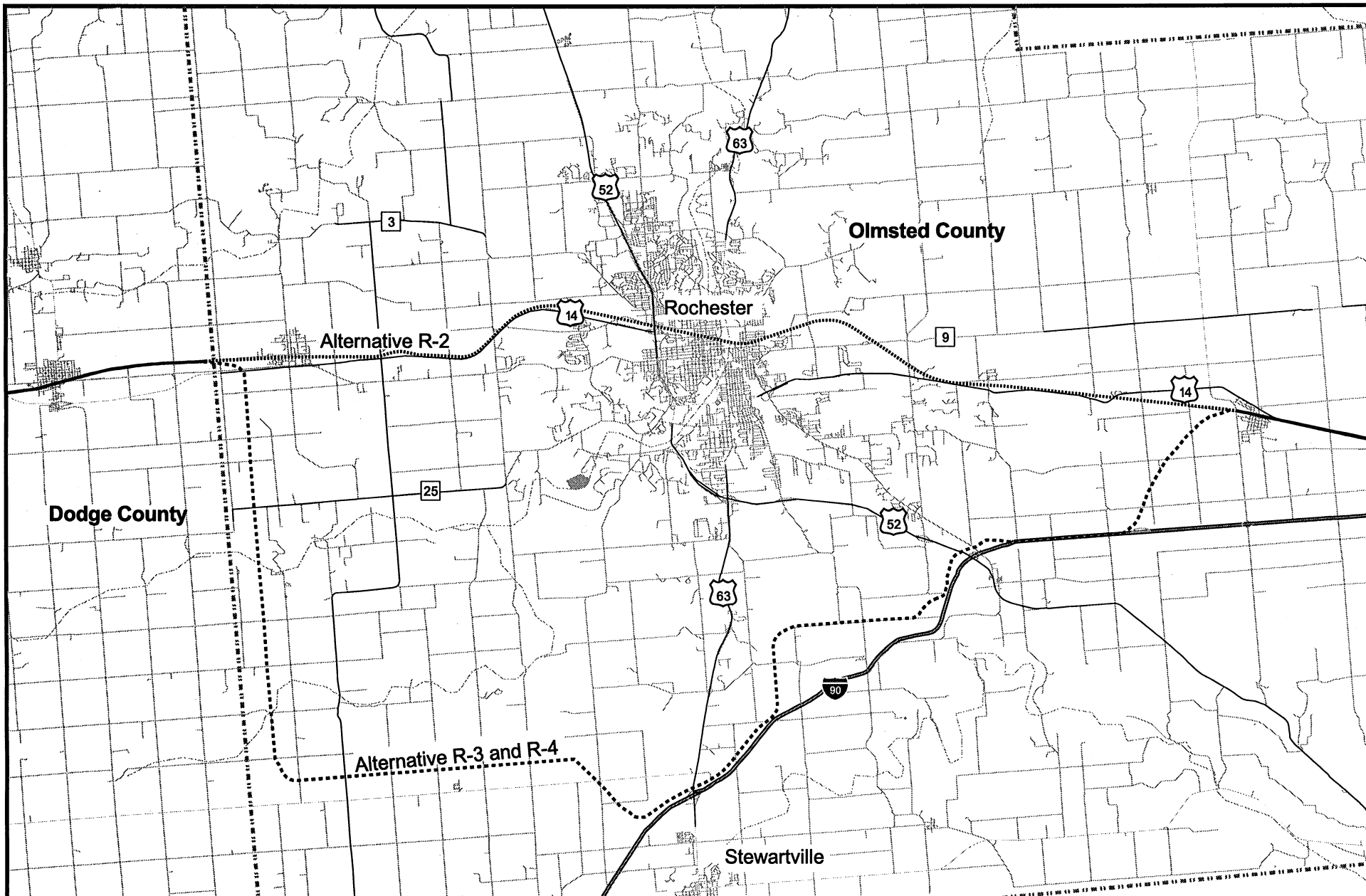
The Rochester (Figure 1-5) and Brookings (Figure 1-6) proposals for community bypasses were evaluated in detail as alternatives to the rehabilitation of the existing DM&E rail line. These alternatives were evaluated both to present their potential impacts to agency decision makers, other agencies, Tribes, and the public, and to comply with the requirement of NEPA to evaluate all reasonable and feasible alternatives, even those not within the jurisdiction of the lead agency, or not wanted by the Applicant.¹⁴

1.3.4 DRAFT EIS ALTERNATIVES

The Draft EIS included components identified in DM&E's Application as well as reasonable alternatives and project components (particularly community bypasses) identified during the scoping process. Project components evaluated in the Draft EIS included:

- No-Action Alternatives, including (1) denial of the entire project or (2) denial of an individual project component (e.g., construction and operation of a bypass), but approval of the overall project.
- Construction and operation of DM&E's original proposal to extend DM&E's existing system westward to the Wyoming Powder River Basin mines to transport coal east of the basin (Alternative B in Draft EIS).
- Construction and operation of an alternative route extending DM&E's existing system while seeking to minimize use of the Cheyenne River corridor, reduce wetlands loss and adverse impacts to riparian habitats, avoid USFS RARE II (Roadless Area Review and Evaluation) areas in South Dakota, and avoid potential endangered species habitat in Wyoming (Alternative C in Draft EIS).
- Construction and operation of an alternative that would, where practical and feasible, use existing transportation corridors in the project's vicinity, particularly existing rail lines (Alternative D in Draft EIS).
- Construction and operation of alternative routes in South Dakota's Spring Creek area avoiding wetland and riparian habitats along Spring Creek (Spring Creek Alternatives in Draft EIS).

¹⁴ 40 CFR 1502.14(a)-(c).



- | | | | |
|--|--------------------|--|--------------------------------|
| | Existing Rail Line | | Roads |
| | New Construction | | County Line |
| | Streams | | Existing Rail Line Alternative |

Figure 1-5
POWDER RIVER BASIN EXPANSION PROJECT
Rochester Alternative Routes
Rochester, Minnesota

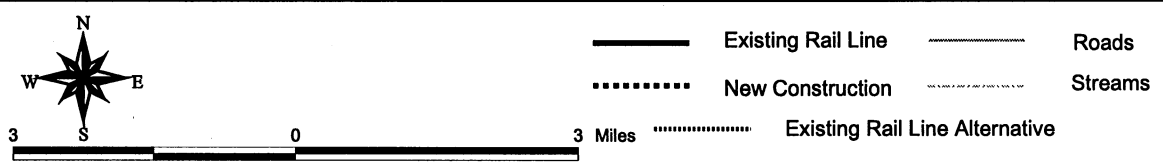
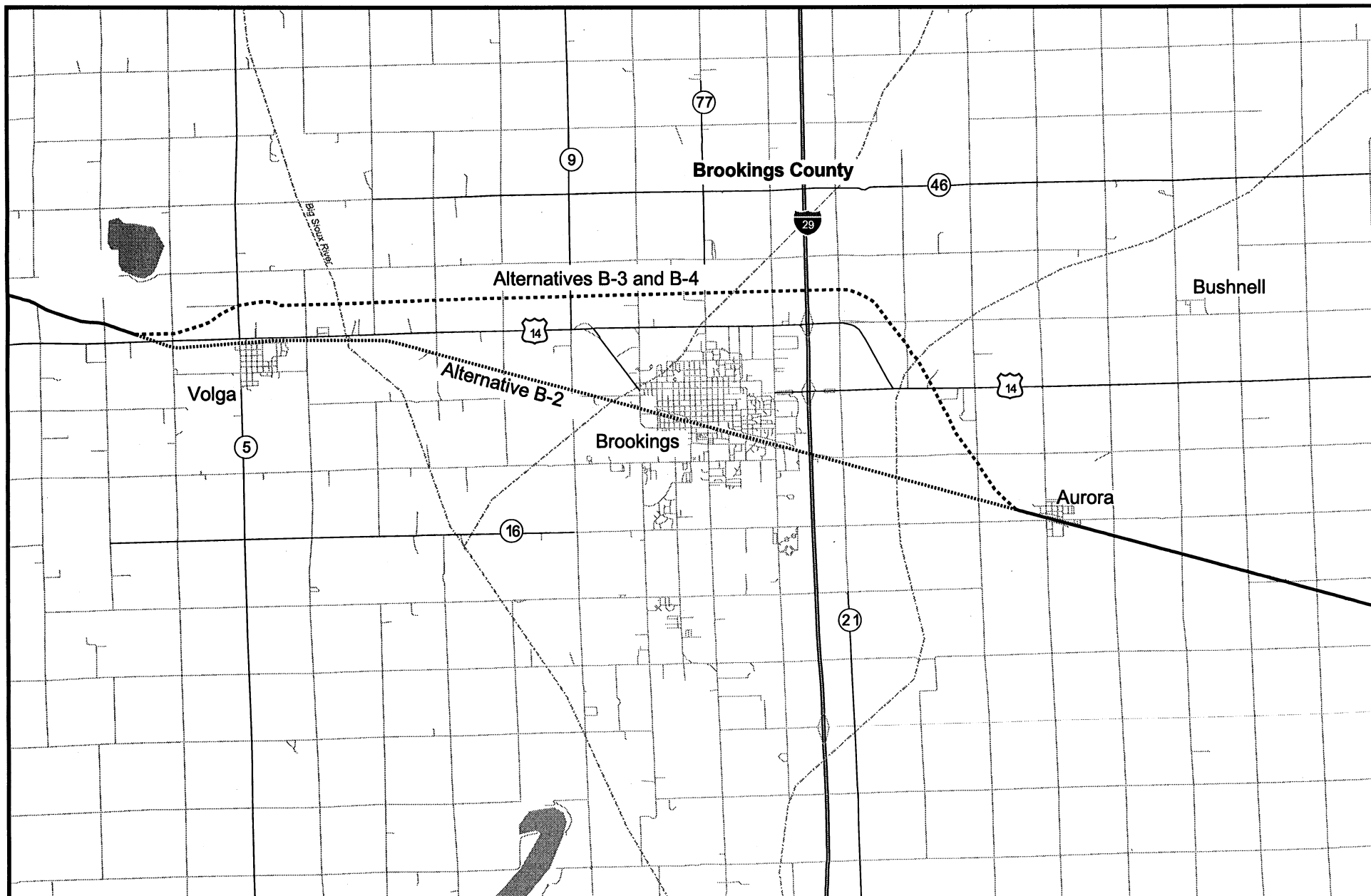


Figure 1-6
 POWDER RIVER BASIN EXPANSION PROJECT
 Brookings Alternative Routes
 Brookings, South Dakota

- Construction and operation of alternative routes for a proposed rail line extension in the Hay Canyon area of South Dakota, to avoid wetland and riparian habitats along Hay Canyon or lands irrigated as part of the Angostura Irrigation Project (Hay Canyon Alternatives in Draft EIS).
- Construction and operation of alternative routes for reaching the Black Thunder coal mine in Wyoming (Black Thunder North and South Alternatives in Draft EIS).
- Construction and operation of alternative routes for reaching the North Antelope coal mine in Wyoming (North Antelope East and West Alternatives in Draft EIS).
- Reconstruction and continued operation of DM&E's existing main rail line across South Dakota and Minnesota to standards allowing DM&E to transport safely and efficiently up to 100 million tons of coal annually in unit coal trains, as well as its existing rail traffic.
- Construction and operation of new rail main line to connect two sections of DM&E's existing main rail line at Mankato, Minnesota in order to avoid operating over existing rail lines owned and operated by UP via trackage rights (M-Alternatives in Draft EIS).
- Construction and operation of a new main rail line that would connect DM&E's existing rail line to the existing rail line of I&M Rail Link at Owatonna, Minnesota (O-Alternatives in Draft EIS).
- Construction and operation of a new rail line alternative route bypassing the existing DM&E rail line through Rochester, Minnesota, as proposed by Rochester (R-Alternatives in Draft EIS).
- Construction and operation of a new alternative route bypassing the existing DM&E rail line through the town of Brookings, South Dakota, as proposed by Brookings (B-Alternatives in Draft EIS).
- Construction and operation of six major new rail yards, many new sidings, and improvements to several existing yards.

With the Draft EIS, SEA sought to inform Federal, state, and local agencies, affected communities, Tribes, and the public about the potential environmental effects of the proposed PRB Expansion Project. It also gave its preliminary conclusions regarding these effects, alternatives SEA had considered, and actions SEA would recommend that the Board require of the Applicant to mitigate or alleviate potentially significant environmental impacts discovered during the environmental review.

1.4 PRELIMINARY CONCLUSIONS IN THE DRAFT EIS

In the Draft EIS, SEA analyzed the alternatives for the project's various components to determine which were reasonable and feasible and which would have potentially significant environmental impacts and whether the impacts could be reduced through mitigation conditions. Because the project components are independent of each other, selection of one alternative does not necessarily foreclose or require selection of a specific alternative for another project component.¹⁵ Consequently, the Board and cooperating agencies could choose to approve some components and not others. It is possible, for example, for one of the action alternative routes into the Powder River Basin to be approved, but none or only one of the community bypasses to be approved.

SEA's in-depth environmental review of the various project components (as well as the No-Action Alternative) included:

- Independent environmental studies including preparing biological surveys for threatened and endangered species; cultural resource investigations for archaeological sites and historic resources; compiling data and studying potential effects on safety, including grade crossing safety and potential delays; air quality (including visibility); railroad and vehicular traffic volumes; wetlands and aquatic resources; noise; wildlife migration; geological resources and soils; and potential impacts to ranches, farms, and communities, including environmental justice communities¹⁶ associated with construction of approximately 280 miles of new rail line and upgrading 600 miles of existing rail line. In conducting its environmental analysis, SEA was helped by several agencies with technical expertise, including the five cooperating agencies. These agencies participated in the development of the Draft EIS, including the preliminary recommended mitigation.

¹⁵ For example, Alternative D for the rail line extension would generally use existing DM&E right-of-way south from Rapid City to Smithwick, South Dakota. It would cross Spring Creek once along this alignment, but would be located over 20 miles west of the Cheyenne River and the alignments of Alternatives B and C. Although it would cross Spring Creek, Alternative D would completely avoid the Spring Creek area through which Extension Alternatives B and C would be required to pass due to these alternatives following new alignment along the Cheyenne River. Therefore, Alternative D would not require use, nor construction or operation, of any of the Spring Creek Alternatives because Alternative D avoids the Spring Creek area.

¹⁶ "Environmental justice communities" are low income and minority populations that should be identified and analyzed to determine if they would be subject to disproportionate adverse affects by the actions of Federal agencies. See Executive Order No. 12898 (Feb. 11, 1996).

- Independent analysis of potential project impacts related to operational increases in rail traffic including safety (such as grade crossing safety, potential vehicular delays, and emergency vehicle response); noise; air quality; transportation; construction-related impacts to safety, land use, biological resources, water resources, geology and soils, air quality, noise, socioeconomics, hazardous materials, transportation systems, cultural and historic resources, environmental justice, and cumulative effects. SEA evaluated potential impacts for three tiers of projected rail operation to account for anticipated growth in train traffic projected by DM&E in its Application: 20 million tons of coal transported annually (8 coal trains per day); 50 million tons (17 per day); and 100 million tons (34 per day).

In conducting its environmental analysis for the Draft EIS, SEA considered a wide variety of interests. These included communities, Tribes, homeowners, farmers and ranchers, and special resources affected by this project (such as two National Grasslands in Wyoming and South Dakota through which the proposed line would pass).

SEA also conducted appropriate technical analyses and studies, consultations, and site visits and gathered extensive environmental data. The potential environmental effects SEA identified in the Draft EIS, both beneficial and adverse, could be substantial. As explained in the Draft EIS, DM&E's existing system in Minnesota and South Dakota, which is in generally poor condition, would be totally upgraded to allow the operation of unit coal trains, thus enhancing the safety of DM&E's existing rail operations. On the other hand, the dramatic increase in the number of trains operating on the existing system (from approximately 3 per day to a maximum of 37) and the impact caused by construction and operation of over two hundred miles of new rail line through generally pristine rural areas would have significant environmental consequences, some of which (such as noise) would be difficult to mitigate. SEA's environmental analysis and its resulting preliminary environmental mitigation recommendations reflect the variety and complexity of the environmental issues and the most reasonable and feasible way to minimize some environmental impacts discovered during the Draft EIS preparation.

Upon completion of the environmental analysis for the Draft EIS, SEA set forth its preliminary selection of the alternative preferred for each project component. This selection process considered all potential environmental impacts to the wide range of natural and human resources SEA evaluated while preparing the Draft EIS. Usually, SEA was able to identify a preferred alternative. However, sometimes, SEA recognized that even the preferred alternative could result in significant environmental impacts that could be difficult to effectively mitigate. In other cases, SEA did not identify a preferred alternative at the Draft EIS stage of the process because of the significance of the potential impacts of all the alternatives for certain project components and the fact that the affected resources varied greatly from alternative to alternative.

SEA's preliminary conclusions regarding preferred alternatives for each project component presented in the Draft EIS included:

- Designation of the Action Alternative for rehabilitation of DM&E's existing rail line as the environmentally preferred alternative. As explained in the Draft EIS, an upgraded, rehabilitated rail line could offer safety benefits to DM&E's existing rail operations and enhance safety in the communities and surrounding rural areas through which DM&E operates. Because DM&E states that rehabilitation of its existing system depends on approval of the new rail line expansion into the PRB, approval of DM&E's proposed rail line extension likely would be necessary before reconstruction of the existing rail line could take place, although no approval from the Board is required for this rehabilitation activity.¹⁷ DM&E's proposal to increase rail operations over its existing system specifically to add a maximum of 34 unit coal trains to its current rail operations could result in potentially significant environmental impacts, thus detracting from the safety improvements that would likely result from a totally upgraded DM&E rail line through Minnesota and South Dakota. Some of these potential safety impacts, however, could be mitigated under the Action Alternative.
- After considering all potential environmental impacts of the Extension Alternatives (B, C, and D), SEA preliminarily concluded that construction and operation of any of these alternatives could result in significant environmental impacts to various resources. Even if SEA's recommended mitigation is implemented, it would most likely only reduce some potential impacts, though in some instances to levels below significant. All alternatives would cause potentially significant adverse environmental impacts in areas such as noise, land use, aesthetics, cultural resources, and possibly air quality (specifically, visibility at Class I airsheds).¹⁸ Based on the information available for the Draft EIS, SEA indicated that Alternative D would not further the purposes of the Applicant and would also have the most significant environmental impacts because it is much longer than the other alternatives, passes through numerous communities and lacks flexibility to avoid sensitive areas. SEA also preliminarily determined that neither Alternative B nor C was environmentally preferable. Nevertheless, Alternative B would have greater potential

¹⁷ Permits would still be required by other agencies, including COE.

¹⁸ Class I airsheds are areas designated by Congress as having "special national or regional value from a natural, scenic, recreational, or historical perspective." Examples include national parks and wilderness areas larger than 5,000 acres and other areas specifically designated by the states or Tribes. Class I areas are designed to have the best air quality and therefore, have the smallest allowable emissions increments for various pollutants (see Draft EIS, Chapter 4, Section 4.4.8).

impacts to safety, Federal lands, water resources, and endangered species than Alternative C, which was specifically developed to avoid some impacts to these resources. As a result, SEA concluded preliminarily that if the new construction receives final approval, Alternative C appears to be the least environmentally intrusive action alternative for the new line extension in Wyoming and western South Dakota.¹⁹

- Both the Spring Creek Segment and the Phiney Flat Alternative would have potentially significant environmental impacts. However, because impacts to water resources, wetlands, and vegetation would be greater for the Spring Creek Segment, and because the impacts to the Phiney Flat Alternative could be mitigated more easily, SEA believed the Phiney Flat Alternative would be environmentally preferred.
- In reviewing the differences among the three Hay Canyon alternatives, Hay Canyon Segment, Oral Segment, and WG Divide Alternative, SEA determined that each of them would have significant environmental impacts affecting different resources. Wetlands and riparian areas of Hay Canyon potentially would be most adversely affected by the Hay Canyon Segment, while irrigated lands in the Angostura Irrigation District potentially would be most adversely affected by the WG Divide Alternative, and the Oral Segment would potentially have the most adverse impact on the Cheyenne River. To identify an environmentally preferable alternative in the Draft EIS from among these three alternatives, SEA would have had to make a value judgment on whether wetland/riparian areas of concern to USFWS are more important to the environment than irrigable lands, which are of concern to Reclamation. Therefore, SEA decided to wait until the Final EIS, when it had the benefit of the parties' comments in order to determine the environmentally preferred alternative.
- SEA preliminarily concluded that neither alternative to access the Black Thunder mine would have significant environmental impacts. However, the North Mine Loop appeared to be preferable because the South Mine Loop would have greater impacts to safety, geological hazards, soils, paleontological resources, land use, Federal lands, surface

¹⁹ The USFS indicated for the Draft EIS that if DM&E's proposal potentially affected only land under USFS jurisdiction, it would prefer the No-Action Alternative. However, USFS acknowledge that DM&E's proposal may have a broader, national interest. Therefore, USFS reasoned that if the Board should determine that DM&E's proposal is in the national interest, then USFS would prefer Alternative C.

waters, wetlands, vegetation, wildlife (except raptors), transportation, cultural resources, and aesthetics.²⁰

- SEA preliminarily concluded that the North Antelope East Mine Loop would be the environmentally preferable alternative, although neither alternative would have significant environmental impacts.
- After considering the Mankato Action Alternatives, SEA preliminarily determined that Alternative M-3 would have significant impacts to noise sensitive and vibration receptors and that extensive mitigation measures might be needed to ensure the continued integrity of local flood projects. Although SEA believed that Alternative M-2 would also have substantial impacts, it appeared that, based on information available for the Draft EIS, these potential adverse environmental impacts could be effectively mitigated. Therefore, SEA preliminarily concluded that Alternative M-2 appeared to be the environmentally preferable alternative. At the same time, SEA recognized that locating additional rail line construction on an existing rail corridor generally is preferable and has less impact on the environment than constructing a new rail line on previously undisturbed land. However, Alternative M-3 could not be implemented without an agreement between UP and DM&E due to Alternative M-3 being located within UP's existing right-of-way. Therefore, SEA indicated that if the Board received notice of an agreement between DM&E and UP permitting DM&E to construct and operate a new connecting track on the existing UP right-of-way in Mankato, Alternative M-3 could emerge as the environmentally preferred route.
- SEA preliminarily concluded that Alternative O-5 was the environmentally preferable alternative in Owatonna because it would only require minimal upgrading on the existing right-of-way, no new construction. But Alternative O-5 could not be implemented without an agreement between UP and DM&E to connect with I&M. Without such an agreement, SEA indicated that Alternative O-4 would be more environmentally preferred than Alternative O-3. Although Alternative O-4 would have essentially the same impacts as Alternative O-3, Alternative O-4 would involve less new rail line construction. This would reduce ground disturbance, land converted to rail line right-of-way, loss of prime farmland, disturb fewer farming operations and rural residences, and involve less locomotive emission and have one less highway grade crossing.

²⁰ The North Mine Loop would have greater but still minimal impacts to Federal grazing pastures, state lands, and raptor nests.

- SEA indicated that in making a final determination on the Rochester, Minnesota and Brookings, South Dakota bypass proposals in the Final EIS, it would consider the costs of constructing and operating the proposed bypasses and whether to require communities to share them. In past proceedings, the Board has not required communities to contribute to funding environmental mitigation absent a voluntary agreement between the railroad and the community to share costs. Here, however, because the bypasses would be generally beneficial to the communities but detrimental to DM&E, SEA requested comments on the extent to which a benefitting community should contribute to the cost of moving the railroad. SEA advised that if the Board approves DM&E's proposal and orders it to bypass Rochester and/or Brookings, those communities could potentially incur substantial costs associated with the bypasses.

A summary of SEA's preliminary conclusions on bypasses from the Draft EIS follows:

- The Brookings, South Dakota Alternative B-2 (the existing route through town) would have significant impacts on noise sensitive and vibration receptors that would be difficult to mitigate effectively. Other impacts, though substantial for some resources, such as wetlands and residential land use, likely could be more effectively mitigated. Based on the differences in potential alternative routes around Brookings, SEA preliminarily concluded that Alternative B-4 appeared to be the most preferable, because it would minimize impacts to noise sensitive receptors.

However, as discussed in the Draft EIS, one stated purpose of this project is to provide improved rail service to existing shippers. Construction and operation of any Brookings bypass would reduce access to an existing shipper and potentially require additional rail construction for reasonable access to the shipper's facility, require the shipper to move, or require the shipper to convert from rail to truck for its transportation needs. Thus, the Brookings bypass alternatives may not contribute to the project's overall purpose and defined need. In the Draft EIS, SEA indicated it would address the comments received, and make a final recommendation on the Brookings bypass to the Board in the Final EIS.

- Rochester, Minnesota Alternative R-2 could potentially have significant impacts on land use and on noise sensitive and vibration receptors. These adverse impacts would affect Mayo Clinic facilities and possibly the Federal Medical Center. Moreover, noise impacts of the magnitude estimated would be difficult to mitigate, and there would also be impacts on transportation and safety, i.e., emergency vehicle movements.

Bypass Alternatives R-3 and R-4 would minimize impacts associated with increased traffic in Rochester by avoiding the city. However, those alternatives would cause substantial impacts to a variety of resources, including soils, farmland, geology, wetlands, vegetation, and wildlife. Although some could be mitigated, they could not be completely avoided. Additionally, construction and operation of either of the bypass alternatives would not improve service or access to existing shippers on the existing DM&E rail line in Rochester. Although reconstruction of other portions of the existing rail line would likely lead to better overall service, if weight restrictions on the existing rail line prevent the use of rail cars loaded to industry standards, the benefits of reconstruction to Rochester shippers would be reduced. Thus, while from an environmental impact standpoint the bypass alternatives appear to minimize overall impact to the human environment, they may not contribute to the overall purpose and need defined for the project.

Generally, use of existing rail corridors is environmentally preferable to construction of new rail line on undisturbed land. Here, however, both reconstruction and operation of the existing rail line and construction and operation of new rail line would have substantial, though different, adverse environmental impacts. Moreover, even where mitigation would likely be successful at reducing impacts of the bypass options, it would entail very substantial costs. In addition, the bypass alternatives may not contribute to the overall project purpose. Therefore, SEA requested further comments on which Rochester options are environmentally preferable and proposals for sharing costs if a bypass option is selected.

After evaluating all potential environmental impacts of project alternatives, SEA developed preliminary mitigation to minimize or reduce the potential environmental impacts of the project. Mitigation measures included in the Draft EIS were designed to address:

- **Rail Operations Safety:** SEA, for example, proposed mitigation that would require that DM&E submit grade crossing safety plans to state and local transportation jurisdictions for review and approval, install reflective material on the back of all passive crossing warning devices (such as crossbucks), and verify completion of this task prior to moving coal trains to and from the PRB.
- **Community Concerns:** DM&E would be required to: 1) provide citizens, communities, agencies, Tribes, and other interested parties a Community Liaison for resolving issues that may arise during construction or operation of the proposed project; 2) install temporary notification signs to advise motorists of the impending increase in train traffic

and train speeds along its existing system and the commencement of rail operations along its rail lines; 3) provide a toll-free number and contact point to all emergency response departments throughout the project area to report emergency situations and obtain train movement information; and 4) comply with mitigation tailored to meet unique concerns of such communities as Rochester and Mankato, Minnesota.

- **The Regulatory Requirements of Cooperating with Other Governmental Agencies:** SEA included mitigation measures that would require DM&E to obtain other approvals and permits, such as permits to affect wetlands, from other Federal, state and local agencies, and comply with the conditions of these approvals and permits.
- **Short-term Construction-related Impacts:** SEA included various best management practices (BMPs) for construction/upgrade activities, dust-control, and erosion-prevention activities.
- **Mitigation Implementation Timing:** Under SEA's recommended mitigation, DM&E would undertake some activities before construction begins, such as fencing its rights-of-way boundaries, surveying raptor nests to minimize construction activity near them during nesting periods, and prohibiting reconstruction of stream crossings that could adversely affect Topeka shiners during their spawning period. Other measures would require that DM&E undertake certain activities when construction is complete, such as initiating land reclamation as soon as possible after construction.
- **Material Change in Circumstances Underlying Board Mitigation Conditions:** SEA included a condition stating that in case of material changes in facts or circumstances upon which SEA relied in its analysis or the Board relied in imposing specific environmental mitigation conditions, and upon determination by the Board or petition by any party who demonstrates such material change, the Board may review the continuing applicability of its final mitigation.
- **DM&E's Mitigation Compliance Assurance:** SEA included a requirement that DM&E certify to the Board its compliance with the terms of certain environmental mitigation measures (such as grade crossing improvements). Also, SEA proposed that DM&E retain a third-party contractor to assist SEA in the monitoring and enforcement of mitigation measures on a regular basis until DM&E has completed construction and reconstruction activities. Monitoring would include periodic site visits and preparation of brief reports to SEA concerning mitigation implementation status. Such assistance to SEA would be for four years, including three years of construction and rehabilitation

activities and the first year of operation, or for any oversight period the Board imposes in this case.

SEA employed a multi-component process to develop recommendations for mitigation measures to minimize the potential environmental impact of this project. This process, as explained in detail in the Draft EIS (Chapter 7), included the following:

- **Consultation with Cooperating Agencies:** In particular, the USFS, with input from the BLM, developed mitigation measures designed to protect National Grasslands and other Federal land resources in the project area.
- **Consultations with Other Appropriate Agencies and Entities:** SEA received input from a variety of Federal agencies, including the USFWS and the National Parks Service (NPS), and state agencies, including state wildlife agencies and departments of transportation, on ways to protect important state resources and public well being.
- **Consultation with Native American Tribes:** In particular, SEA and the Tribes, cooperating agencies, and the Applicant developed a Programmatic Agreement (PA) and a Memorandum of Agreement (MOA), providing Tribes the opportunity for substantive participation in the environmental and historic review process under NEPA and Section 106 of the National Historic Preservation Act in this case. The purpose of the PA is to ensure proper and respectful identification and handling of archaeological discoveries, particularly burial sites and other sacred artifacts found in the project area. The MOA²¹ is designed to address tribal concerns for other, non-archaeological resources such as sacred plants, water quality, and big game migration routes. SEA's environmental mitigation would require compliance with both the PA and the MOA. Both the PA and MOA also were included in the Draft EIS to permit public review and comment.
- **Consultation with Affected Communities:** SEA's recommended environmental mitigation measures considered community input and concerns.
- **Encouraging Voluntary Mitigation by Applicant:** SEA encouraged DM&E to communicate with concerned agencies, residents, and affected communities, and use their input to develop voluntary mitigation and negotiated agreements addressing community concerns. Negotiated agreements with neighborhoods, communities, counties, cities,

²¹ In this case, the MOA is not intended to serve as an MOA as described under Section 106 of the National Historic Preservation Act, where it would outline the measures to be implemented for the protection or mitigation of an identified historic or archaeological site which would be adversely affected by a proposed project.

regional coalitions, Tribes, states, Federal agencies, and other entities can often result in more far-reaching mitigation than the Board unilaterally imposes. Therefore, when such agreements are submitted to it, the Board's practice is to require compliance with agreement terms as environmental conditions in its final decisions approving proposed rail construction projects. Such agreements generally substitute for specific local and site-specific environmental conditions the Board would otherwise impose for a particular entity.

SEA noted in the Draft EIS that not all effects of this project can be mitigated. For example, train horns significantly affect residents near the rail line and cannot be fully mitigated without compromising safety. Even with mitigation, there would be some vehicle delay at grade crossings, visual impacts on grasslands, and impacts on wetlands and riparian habitat.

SEA's preliminary environmental mitigation measures generally applied to both DM&E's proposed new rail line construction and the reconstruction and upgrade of DM&E's existing rail line. Only a few environmental mitigation measures in the Draft EIS were designed to apply to specific communities. Based on information available in the Draft EIS, potential environmental impacts on communities associated with the PRB Expansion Project appeared to be similar. Despite the individual characteristics of the communities involved, each of the affected communities would experience the same construction-related impacts and number of trains (up to 37 per day over the rehabilitated line for DM&E's existing agricultural traffic, and the proposed maximum of 34 new coal trains to and from the PRB).²² Moreover, impacts of the PRB Expansion Project on noise sensitive receptors are not specific to the community in which receptors are located, but to residences' proximity to the rail right-of-way, regardless of the community.

SEA did not design environmental mitigation specific to potential bypass routes around Brookings, South Dakota and Rochester, Minnesota in the Draft EIS. Instead, it determined that if it identified one or more bypasses as environmentally preferable in the Final EIS, it could develop and recommend environmental mitigation applicable to that bypass in the Final EIS, if appropriate.

²² By contrast, in recent rail merger proceedings, the merger related increase in rail traffic along particular segments varied widely, and it was appropriate to tailor mitigation to reflect the differences in anticipated environmental impacts. See Finance Docket No. 32760 - Union Pacific Corporation Control and Merger with Southern Pacific Rail Corporation, 1996; Finance Docket No. 33388 - CSX Corporation and Norfolk Southern Corporation - Acquisition of Conrail Inc., 1997-1998; and Finance Docket No. 33556 - Canadian National Railway Company Control of Illinois Central Corporation, 1998.

Finally, emphasizing that recommended mitigation measures in the Draft EIS are preliminary, SEA invited public and agency comments on all proposed mitigation measures. Also, it invited the public to provide specific suggestions regarding any desired mitigation tailored to specific communities and the reasons such mitigation would be appropriate.

1.5 COMMENT PERIOD

The Draft EIS was completed and served on the Parties of Record on the project on September 27, 2000. The Board published the Notice of Availability of the Draft EIS in the *Federal Register* on October 6, 2000.

The CEQ regulations implementing NEPA give the public at least 45 days in which to review and comment on a Draft EIS. Because of the size and complexity of DM&E's proposal, SEA initially provided a 90-day comment period on this Draft EIS. However, SEA received several hundred requests from Federal, state, and local agencies, members of the public, and Tribes for an extension of the comment period. Others, primarily project supporters, opposed any extension of time. SEA decided to grant a 60-day extension so that the comment period, originally ending on January 5, 2001, was extended to March 6, 2001.

SEA invited public comment on all aspects of the Draft EIS. It specifically asked for comments on which alternatives should be deemed environmentally preferable (including No-Action), the reasonableness and feasibility of proposed mitigation measures, and suggestions for additional or alternate mitigation measures, including specific suggestions for mitigation tailored to the needs of individual communities.

SEA indicated that its final recommendations on mitigation to the Board would be in the Final EIS, following consideration of the public comments and additional environmental analysis, agency consultations, and site visits, as appropriate. SEA stated that the Board would then make its final decision regarding this project and any environmental conditions it might impose. In deciding whether to grant final approval to the proposed transaction, the Board would consider both potential environmental effects and the costs of any environmental mitigation it might impose.

Following publication of the Draft EIS, SEA made the document widely available for review. Because it was quite large – over 5,000 pages in several volumes – the entire document was available only on the Board's website (<http://www.stb.dot.gov>) and to key reviewing agencies and other entities, Parties of Record, and those requesting it in response to a postcard mailing in June 2000. Over 2,000 copies of the complete Draft EIS, as either hard copies or on

CD-ROM, and several hundred of the Executive Summary were distributed. The Draft EIS also went out to the reference section of over 80 public libraries. In addition, SEA instituted a toll-free Environmental Hotline to answer questions and indicate which libraries had the document. SEA answered hundreds of calls during the comment period.

In addition to accepting written comments on the Draft EIS, SEA hosted 12 public meetings on the Draft EIS as listed below. At each meeting SEA and the cooperating agencies gave a brief presentation, then invited interested parties to make oral or written comments. All public meetings followed the same format and used the same agenda, and a transcriber at each meeting ensured that oral comments were accurately captured. In locations where two meetings were held, both afternoon and evening sessions followed the same format and used the same agenda, making it unnecessary to attend more than one meeting. The following public meetings were held:

Douglas, Wyoming

Best Western Douglas Inn
1450 Riverbend Drive
Douglas, WY 82701
Monday, October 30, 2000
6:00 - 10:00 p.m.

Newcastle, Wyoming

The Fountain Inn
2 Fountain Plaza
Newcastle, WY 82701
Wednesday, November 1, 2000
1:00 - 4:00 p.m. and 6:00 - 10:00 p.m.

Rapid City, South Dakota

Rushmore Plaza Civic Center
444 Mount Rushmore Road North
Rapid City, SD 57701
Thursday, November 2, 2000
6:00 - 10:00 p.m.

Pierre, South Dakota

Best Western Kings Inn
200 South Pierre
Pierre, SD 57501
Monday, November 13, 2000
1:00 - 4:00 p.m. and 6:00 - 10:00 p.m.

Brookings, South Dakota

Brookings Inn
2500 East 5th Street
Brookings, SD 57006
Tuesday, November 14, 2000
1:00 - 4:00 p.m. and 6:00 - 10:00 p.m.

North Mankato, Minnesota

Best Western Hotel and Restaurant
1111 Range Street
North Mankato, MN 56003
Wednesday, November 15, 2000
1:00 - 4:00 p.m. and 6:00 - 10:00 p.m.

Rochester, Minnesota

Mayo Civic Center
30 Civic Center Drive SE
Rochester, MN 55904
Thursday, November 16, 2000
1:00 - 4:00 p.m. and 6:00 - 10:00 p.m.

To maximize the number of persons able to speak at the public meetings, SEA urged speakers to pre-register by October 20, 2000 via the Environmental Hotline. Speakers were called in the order in which they pre-registered, although unregistered speakers were also accommodated, sometimes by running meetings longer than scheduled. Because several meetings had open speaking slots, SEA allowed some to speak at more than one meeting. The meetings were attended by more than 1,700 persons, and 499 speakers presented comments on the Draft EIS.

SEA and the cooperating agencies also held a meeting at Rosebud Casino on the Rosebud Reservation, affording Tribal members an opportunity to comment orally. Over 30 Tribes were invited to meetings held November 28-30, 2000, which were attended by more than 70 Tribal representatives who provided comments on the Draft EIS, PA, and MOA.

1.6 FINAL EIS DEVELOPMENT

At the end of the public comment period on March 6, 2001, SEA reviewed all oral public meeting comments, as well as the nearly 8,600 written comments,²³ and the Board posted on its website the more significant ones, including those by cooperating agencies. Because there were many requests for supplemented, improved, or modified analyses, SEA prepared and presents in this Final EIS additional analysis, to satisfy the Board's obligation under NEPA to take a "hard look" at the environmental consequences of this project. In this Final EIS, SEA has clarified, amplified, and refined the information in the Draft EIS, where appropriate. For example, when EPA requested analysis of a Modified D Alternative not previously considered, SEA analyzed EPA's suggested "Modified D" route in sufficient detail to convince both agencies that it was neither reasonable nor practicable, as explained in greater detail below. Therefore, with EPA's concurrence, SEA eliminated this modification, as well as the other D Alternatives, from further consideration.

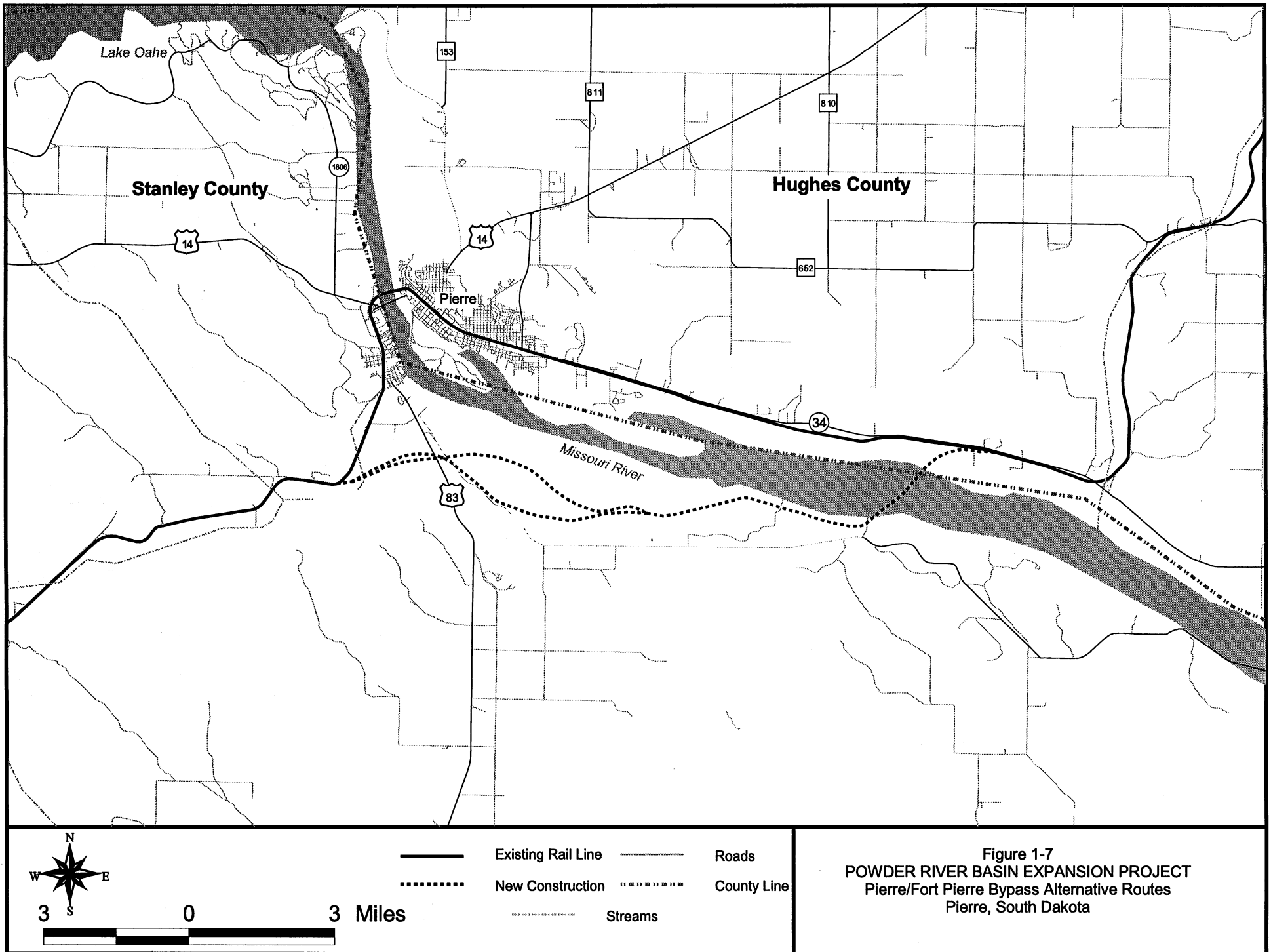
In response to comments from residents of Pierre, South Dakota, SEA conducted additional analysis of the Pierre bypass (Figure 1-7). Other additional analysis included vibration studies to further study potential impacts in Mankato and Rochester, Minnesota. None of this analysis changed SEA's identification of what project-related impacts would be significant, or whether a particular routing alternative is environmentally preferable.

1.6.1 CONCLUSION OF THE DM&E PROCEEDING

Among the comments SEA received and considered were several requesting a supplement to the Draft EIS or another public comment period after issuance of the Final EIS. Having carefully considered these public and agency comments, SEA has determined that neither a supplement nor an additional comment period is warranted. While this Final EIS presents

²³ In accordance with NEPA's CEQ regulations, SEA evaluated each comment, determining whether to:

- "(1) Modify alternatives including the proposed action.
- (2) Develop and evaluate alternatives not previously given serious consideration by the agency.
- (3) Supplement, improve, or modify its analyses.
- (4) Make factual corrections.
- (5) Explain why the comments do not warrant further agency response. . . ." 40 CFR 1503.4(a).



clarifications and additional and modified analysis, SEA presents no “significant new circumstances or information,” and has made no “substantial changes in the proposed action,” which would trigger a supplement²⁴ to the Draft EIS or an additional comment period²⁵ pursuant to the CEQ regulations. In view of SEA’s exhaustive analyses of the PRB Expansion Project in both the Draft and Final EIS, the environmental review process is appropriately concluded with publication of the Final EIS.

Based on consideration of the Draft and Final EIS and all comments received, the Board will now determine whether to give final approval to the project, and if so, the appropriate environmental mitigation and its potential cost. DM&E may begin construction only if the Board issues a final written decision approving the PRB Expansion Project. Moreover, each of the cooperating agencies would also need to issue the relevant easements and permits to DM&E, allowing construction to begin.

1.6.2 LEAD AND COOPERATING AGENCY DECISIONS

Under CEQ regulations implementing NEPA, when more than one Federal agency has jurisdiction over aspects of a proposed project, a designated lead agency supervises preparation of the EIS,²⁶ with assistance from other cooperating agencies.²⁷ The Board is the lead agency for the PRB Expansion Project, with USFS, BLM, COE, Reclamation, and Coast Guard as the cooperating agencies. The Draft and Final EIS were prepared in compliance with NEPA and related environmental laws, Board regulations for implementing NEPA,²⁸ and CEQ regulations implementing NEPA, as well as USFS, BLM, COE, Reclamation, and Coast Guard policy, procedures, and guidance documents. The Federal agencies’ decision-making authority, and the status of the various applications, is presented below.

²⁴ 40 CFR 1502.9(c).

²⁵ 40 CFR 1503.1(a)(1-4).

²⁶ 40 CFR 1501.5(a).

²⁷ 40 CFR 1501.6.

²⁸ 49 CFR 1105.

1.6.2.1 The Board

Authorization to construct a new rail line must be obtained from the Board. Under ICCTA, construction applications are to be approved unless they are inconsistent with the public interest (49 U.S.C. 10901(c)).²⁹ The Board may (1) approve a transaction as proposed; (2) approve it with conditions, including environmental conditions, to offset or reduce its potential impacts; or (3) disapprove the transaction entirely.³⁰

On December 10, 1998, the Board found, based on the record developed at that time, that DM&E's proposal satisfies the transportation aspects of 49 U.S.C. 10901. However, the Board explained that the project would not be finally approved until the environmental review process was complete and the Board had assessed potential environmental effects and the costs of environmental mitigation that it might impose. The Board said it would issue a final decision on the project following completion of the EIS process and that no new construction could begin until a final decision approving it was effective.

1.6.2.2 U.S. Forest Service

On April 28, 1998, DM&E submitted a Special Use Application to the USFS for an easement under the Federal Land Policy and Management Act of 1976,³¹ to construct a new rail line across portions of the Thunder Basin National Grassland (part of the Medicine Bow-Routt National Forest) in Wyoming and the Buffalo Gap National Grassland (part of the Nebraska National Forest) in South Dakota. USFS will decide whether to issue DM&E an easement, and, if so, the terms and conditions, including location, of the easement.

²⁹ In enacting ICCTA, Congress intended to facilitate rail line construction by changing the statutory standard for approval. Previously approval was required if the agency found that a project was consistent with public convenience and necessity; now approval is required unless the agency finds that the project is inconsistent with public convenience and necessity. The Board noted in its December 10, 1998 decision (at p. 17) that "[u]nder the revised statute, proposed rail constructions are to be given the benefit of the doubt."

³⁰ Board-imposed conditions, including environmental mitigation, must be directly related to the transaction, reasonable, and supported by the record. The Board does not require mitigation of pre-existing environmental impacts, such as impacts resulting from existing railroad operations or land development.

³¹ 43 U.S.C. 1737.

The National Forest Management Act of 1976,³² requires consistency between the project proposed and the National Forest Land and Resource Management Plans (Forest Plans). DM&E's project was evaluated by USFS for consistency with the guidelines of two existing Forest Plans (Nebraska and Medicine Bow Forest Plans) and the National Grasslands Plan Revision (Preferred Alternative 3). Although USFS has identified Alternative C as its preferred action alternative for this project, Alternative C would not be consistent with any of these Forest Plans.

In addition, the USFS is required by 36 CFR 219 to inventory, evaluate, and consider all roadless areas within the National Forest System for possible inclusion in the National Wilderness Preservation System (Roadless Area Review and Evaluation II or "RARE II"). Certain alternatives could affect the RARE II areas identified on the Buffalo Gap National Grassland, Nebraska National Forest, which would also trigger a Forest Plan amendment process, if selected. However, the USFS preferred action alternative, Alternative C (should the Board ultimately approve the proposed project), would avoid those areas.

1.6.2.3 U.S. Bureau of Land Management

In April 1998, DM&E requested permission to cross portions of public lands within Wyoming and South Dakota that BLM administers. BLM will decide whether to issue a right-of-way easement under the Federal Land Management and Policy Act of 1976, and if so, where the easement should be located.

1.6.2.4 U.S. Army Corps of Engineers

In September 2000, DM&E submitted applications to the St. Paul and Omaha Districts of the COE, under Section 404 of the Clean Water Act, for permits to engage in dredging and filling activities within waters of the United States. Additionally, a permit under Section 10 of the Rivers and Harbors Act of 1899 will be required from the St. Paul District for encroachment into the Minnesota River. The COE will consider whether to issue permits to DM&E based on DM&E's application, the EIS, and comments received.

1.6.2.5 U.S. Bureau of Reclamation

Reclamation operates and administers the Angostura Reservoir in western South Dakota, and associated irrigation canals and laterals. The Bureau works closely with the local irrigation

³² 36 CFR 219.10(e).

district for repayment of project costs based on water delivered and acres of irrigated land. If the PRB Expansion Project crosses lands, facilities, irrigation canals, or laterals under its jurisdiction, a permit for such crossings would be required from Reclamation prior to construction.

1.6.2.6 U.S. Coast Guard

The Coast Guard issues bridge permits under Section 9 of the Rivers and Harbors Act of 1899 and under the General Bridge Act of 1946. Therefore, before DM&E rebuilds or constructs a new bridge over navigable waters (such as the Missouri River bridge crossing at Pierre, South Dakota), it would need a permit from the Coast Guard.

1.7 ORGANIZATION OF THE FINAL EIS

This particularly complex project contains a number of components, each with several alternatives, and each alternative with its own environmental impacts. The project encompasses construction projects, rail operations, and the interests of agencies, Tribes, communities, and landowners in three states. Additionally, this EIS must meet the individual needs and support the decisions of six Federal agencies that includes the Board, USFS, BLM, COE, Reclamation, and the Coast Guard.

Some comments SEA received criticized the organization of the Draft EIS, stating that issues of concern to the reader were difficult to find. SEA has tried to make this Final EIS more reader-friendly. Many comments came from residents of communities potentially affected by the PRB Expansion Project. Because these commenters often raised concerns unique to a particular community, SEA decided, where appropriate, to organize the Final EIS geographically. Moreover, to avoid unnecessary repetition in this long and extremely complex case, SEA has not restated the analysis contained in the Draft EIS unless modification or clarification was required to fully respond to the comments. SEA has also placed technical information in the appendices to this Final EIS, rather than in the body of the document.

The Final EIS is organized as follows:

- **Executive Summary** – An overview summarizing results of SEA's additional analysis in response to comments on the Draft EIS. It also presents SEA's recommendations on preferred alternatives for the project components and mitigation for the project.
- **Chapter 1: Introduction** – An overview of the NEPA and EIS processes for the PRB Expansion Project, as well as a discussion of the decision-making procedures of the lead and cooperating agencies. Information on the organization of this Final EIS.

- **Chapter 2: Purpose and Need** – Information on the need for the proposed project beyond that included in the Draft EIS, including increased demand for electricity and PRB coal, and increased and improved rail infrastructure.
- **Chapter 3: Rail Line Extension** – Additional analysis and recommended conclusions on DM&E's proposed construction and operation of a new rail line extension into the PRB. It addresses rail line extension alternatives, Spring Creek Alternatives, Hay Canyon Alternatives, and mine loop alternatives. It also discusses existing conditions in the rail line extension area and potential environmental impacts of alternatives; evaluates additional alternatives raised during the Draft EIS comment period, including the Railroad Rehabilitation and Improvement Financing Program and revisions to Alternative D.
- **Chapter 4: Existing Rail Line, Rail Yards, and Sidings** – Additional analysis related to DM&E's proposed rehabilitation and increased rail operations along its existing rail line. Discusses additional analysis of proposed new rail yards, including existing conditions, potential environmental impacts of alternatives, and SEA's recommendations.
- **Chapter 5: Pierre, South Dakota** – Additional analysis and recommended conclusions on the proposed Pierre bypass, including existing environment, additional analysis of potential impacts of the bypass, rehabilitating the existing rail line, and crossing the Missouri River.
- **Chapter 6: Brookings, South Dakota** – Additional analysis and recommended conclusions on the proposed Brookings bypass, including additional analysis of existing conditions and potential impacts of the bypass alignment evaluated in the Draft EIS, discussion of the revised bypass alignment submitted during the Draft EIS comment period, and rehabilitation of the existing rail line.
- **Chapter 7: Mankato, Minnesota** – Additional analysis and recommended conclusions on proposed new connecting track at Mankato, including discussions of existing conditions, alternatives, and potential impacts of each alternative.
- **Chapter 8: Owatonna, Minnesota** – Additional analysis and recommended conclusions related to proposed connecting track between DM&E and I&M Rail Link at Owatonna. It also includes SEA's response to comments on this project component, a summary of information contained in the Draft EIS, and SEA's recommendations for the I&M connection.

- **Chapter 9: Rochester, Minnesota** – Additional analysis and evaluation of the proposed Rochester bypass, including existing conditions of the bypass area and Rochester, as well as additional discussion of potential environmental impacts of the proposed bypass, rehabilitation of the existing rail line, the No-Action Alternative, and SEA's recommended conclusions for this part of the overall project.
- **Chapter 10: Cumulative Impacts** – Additional analysis of potential cumulative impacts of the project, including Mississippi River barge traffic, air emissions, grade crossing delay, grade crossing safety, and other system-wide or regional rail related impacts.
- **Chapter 11: Public Outreach** – This Chapter discusses the additional public outreach SEA conducted following release of the Draft EIS.
- **Chapter 12: Recommended Environmental Conditions** – This Chapter presents SEA's final recommended mitigation measures and discusses modifications to the preliminary mitigation in the Draft EIS. There are both general and local and site-specific mitigation measures. Mitigation measures are recommended for both the construction and operation of the new rail line and DM&E's existing rail line, with several measures dependent on the level of coal transportation DM&E achieves. Chapter 12 also includes the estimated cost of complying with SEA's recommended mitigation, and the permitting requirements of the cooperating agencies. Finally there is a list of those who prepared the Final EIS, a list of references used in SEA's additional analysis, and the Index to the Final EIS.
- **Appendices** – Technical and support materials SEA used and developed as part of the additional analysis necessary for the Final EIS, including:
 - A: Draft EIS Index** – Identifies errors in the Draft EIS, such as typographical and grammatical mistakes, and corrections for them. Also includes an index for the Draft EIS.
 - B: Draft EIS Comments and Responses** – Summary report of comments on the Draft EIS and SEA's or the cooperating agencies' responses to these comments.
 - C: Additional Correspondence** – This appendix contains correspondence pertinent to SEA's analysis in the Final EIS.

- D: Grade Crossing Mitigation Plan** – This appendix includes a plan developed by DM&E and submitted to SEA as voluntary grade crossing mitigation. SEA is recommending a condition requiring DM&E to comply with the Grade Crossing Mitigation Plan if the Board gives final approval to the PRB Expansion Project.
- E: Negotiated Agreements** – This appendix includes a list of the Negotiated Agreements submitted to SEA. SEA is recommending a condition requiring DM&E to comply with the Negotiated Agreements if the Board gives final approval to the PRB Expansion Project.
- F: Memorandum of Agreement** – This appendix contains the Final Memorandum of Agreement involving issue of concern for Tribes for execution by the Board, DM&E and the Tribes.
- G: Programmatic Agreement** – This appendix includes the Final Programmatic Agreement and Identification Plan involving cultural resources for execution by the Board, Advisory Council, State Historic Preservation Officers, DM&E, and Tribes.
- H: Biological Assessment** – Biological Assessment and the U.S. Fish and Wildlife Service Biological Opinion.
- I: USFS Roads Inventory** – Technical report by the U.S. Forest Service containing and addressing the inventory of roads crossed by the proposed project on the Buffalo Gap and Thunder Basin National Grasslands.
- J: DM&E Rail Siding Plan** – Overview maps of DM&E's existing system and proposed new construction showing, approximately every five miles, milepost locations along DM&E's existing system and proposed new construction alternatives. Also includes a summary chart of milepost locations for proposed rail sidings under each Extension Alternative.
- K: Safety** – Technical data supporting additional analysis related to calculation of grade crossing accident frequencies.
- L: Transportation** – Technical data supporting additional analysis related to the calculation of vehicle delay at grade crossings.

- M: Technical Reports** – Technical reports containing and addressing SEA’s additional evaluation of the potential environmental issues.
- N: Environmental Justice** – Methodology and technical data supporting additional analysis related to the identification of potential environmental justice communities and determining whether or not they would be disproportionately adversely affected by the proposed project.
- O: Public Outreach Materials** – Information on SEA’s additional public outreach since release of the Draft EIS.

1.8 DISTRIBUTION AND AVAILABILITY OF THE FINAL EIS

Although not as long as the Draft EIS, this Final EIS is still quite lengthy. Therefore, SEA has mailed the entire document only to key reviewing agencies and other entities, Governors, and elected officials, as well as the parties of record. SEA has also sent the Final EIS to appropriate county offices. In addition, SEA has distributed the Final EIS to over 80 public libraries, and asked that the Final EIS be made available in their reference section. To obtain the name of the library nearest you that has the Final EIS, please call the Environmental Hotline at (877) 404-3044, and leave your name, address and telephone number. Someone will return your call with the location of the library nearest you where you may review the document. Finally, the entire document is available on the Board’s website (<http://www.stb.dot.gov>), and can be accessed by clicking on “Decisions & Notices,” and selecting any one of the following choices: 1) Service Date (November 19, 2001), 2) Docket Number (FD 33407), or 3) Docket Prefix (FD). The Final EIS will be listed as “Environmental Review” under the “TYPE” category.

SEA notes that the size of the Draft EIS made it difficult to access that document on-line. SEA has taken steps to make it quicker and easier to access the Final EIS. In accordance with CEQ regulations, SEA has submitted the Final EIS to the U.S. Environmental Protection Agency for formal public notice of availability. The Board also has published its own Notice of Availability in the *Federal Register* and mailed copies to the several thousand people, agencies, Tribes, and organizations on the project mailing list. The Board’s Notice of Availability announces the locations where the entire Final EIS is available and gives the Board’s website address, along with instruction on how to access the document on-line.

In accordance with CEQ regulations implementing NEPA, no agency decision on the proposed action may be made until 30 days after EPA publishes its Notice of Availability of the Final EIS. Congress has not established a statutory time frame within which the Board must issue its final decision, and the Board — in recognition of the complexity of this controversial

proceeding — has not announced a date for issuance of the final decision. In the interests of bringing this matter to closure, however, the Board will act as promptly as possible.

In its final decision, the Board will address the entire proposed project, assessing the potential environmental effects, and the cost of any environmental mitigation it might impose; and it will impose any conditions it deems appropriate, including environmental conditions. No project-related construction may begin until the Board's final decision has been issued and has become effective. Parties who wish to file an administrative appeal of the Board's written decision, including any environmental conditions that the Board might impose, may do so within 20 days of that date, as provided in the Board's rules. The Board will consider any administrative appeals in a subsequent decision. The appeal processes of the other cooperating agencies will be presented in their Records of Decision.

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